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# REMARKS ON POPULAR SOVEREIGNTY,

AS MAINTAINED AND DENIED RESPECTIVELY BY

Judge Douglas, and Attorney-General Black.

BY A SOUTHERN CITIZEN.

*Hon. Henry Johnson*

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BALTIMORE .. MURPHY & Co. PRINTERS AND PUBLISHERS,  
MARBLE BUILDING, 182 BALTIMORE STREET.  
HENRY TAYLOR.....SUN BUILDING.

1859.

## POPULAR SOVEREIGNTY.

THE article by JUDGE DOUGLAS, in the last September number of Harper's Magazine, on "The Dividing Line between Federal and Local Authority," and the "Observations" on it by the Attorney-General of the United States, have given to the subject renewed and additional interest. The public mind is now, probably, more than at any preceding period, specially called to consider it as one which must soon be settled, if the peace of the country is to be restored and maintained. Participating in this impression, the writer of these remarks cannot be esteemed obtrusive if he states his own opinion, and, as briefly as perspicuity will permit, the reasons on which it rests. This, too, is undertaken in no party spirit, or through any prejudice, of which he is aware, to parties or persons. The question itself is of so much interest, is so closely connected with the continuing quiet and prosperity of the country, that it would be almost desecration to deal with it with other than national and patriotic motives. It is hoped that this will be remembered and regarded throughout the discussion. Such certainly is the wish and design of the writer. Nor will he refer, in regard to it, to any inconsistencies into which our statesmen, past or present, may have fallen. These prove nothing in support either of the opinion discarded or adopted. They only serve to subtract from each whatever of authority may belong to the name of its author. Nor do they impeach his integrity. Public virtue by no means consists of uniform consistency. "The wise man sometimes changes his opinion, the fool never." Time and reflection are generally but misapplied, if they fail to discern past errors; and honesty does not exist, if, when discovered, they are not corrected. There are few, either constitutional or merely political questions of general importance, upon which our statesmen have not entertained, and at different times acted upon, different opinions. The constitutionality and expediency of a protective tariff, the authority to legislate over internal improvements, the power to establish a national bank, to prohibit slavery in the territories, the propriety and policy of bringing executive influence to bear upon elections, Federal or State, the

removal from office of faithful officers, for conscientiously maintaining their own political opinions, and the more modern doctrine of rotation in office, that personal friends and dependents may be specially provided for, (both not only pernicious to the public service, but productive of deep and enduring hostility to the executive himself,) are all of them instances in which living statesmen, high, too, in public confidence and station, have, at various periods of their career, avowed and been governed by antagonistic views. Charity, at least, should persuade us that, however mistaken, patriotic, not selfish motives, must have induced the change. The fact certainly is a fixed historical one, but, however it diminishes faith in the judgment of such men, and may seriously affect the authority and fame of their names, the honor of the country, which in some measure is bound up in their own, it would be unjust to wound, by attributing the vacillation to corrupt motives. Nor is it his purpose to examine with any unkindness, much less aspersity of criticism, the "Observations" of the Attorney-General. These, as well as the article which called them forth, are characterized by great ability, and, by the friends of the writers, and of the school to which they now severally belong, seem to be considered unanswerable. Substantially agreeing with Judge Douglas, no particular reference will be made to his paper. Nor will the other be especially noticed, except as may be necessary to explain the writer's own opinion, and the reasons on which it is founded: and this will be done in a manner consistent with the respect for the Attorney-General, which all who know him even as slightly as the writer, entertain for his talents, and his private and public character. It is, however, no departure, he thinks, from this voluntary and agreeable restraint, to say, that in this controversy he has illustrated the philosophic truth, that the science of the law does less "to open and liberalize the mind," than "to quicken and invigorate the understanding," and has also exhibited rather the feelings of a partisan, and personal friend of the President, than the attributes of the accomplished lawyer. Nor is this latter weakness to be much wondered at or reproved. It leans, indeed, to virtue's side. Private attachment, founded in mutual gratitude, is, no doubt, its cause, and when just, as in this case it must be, is rather, even in excess, to be honored than condemned. Nor can these remarks receive any other consideration than may belong to their intrinsic value. They will be left to stand or fall by their own strength or

weakness. Whatever adventitious importance, in the judgment of a few, might possibly be imparted to them, if the name of the writer was given, they will want. It is reason, and not the authority, slight as that would be in this instance, of an humble name, to which alone he desires to appeal. With these preliminary observations he proceeds to his task.

The question to be considered is, the power of Congress to legislate in regard to slave property within a Territory of the United States, to whose people they have granted a territorial government clothed with legislative power. Can they, in advance of such a grant, prohibit or establish slavery within the Territory, or, after such grant, can they do either, or protect, by legislation, such property if found there, against the will of the local government; and if not, can such government do all or either. These propositions can be best examined separately.

I.—The power of Congress to prohibit slavery, previous to its awarding a territorial government. This question should not be esteemed an open one, as it was judicially settled against the power, by the Supreme Court of the United States, in the Dred Scott case. The question was there directly and fully presented. Such was the view taken by the minority of the Court, as well as by the majority. The former, as well as the latter, and properly, elaborately considered it. The case might have been made to turn on some of the other questions, but there were no others more clearly before the Court than this. Few cases ever arise in which there are not found propositions equally conclusive as to the judgment, but, generally, no Court performs its duty, if it fails to dispose of them all. This is necessary, to avoid subsequent controversy, not only in the particular instance where it might well occur, but in like cases that might thereafter arise. To be certain, so desirable in every system of jurisprudence, the law should be made known when the occasion is fairly offered, and the Court that fails in this particular, not only omits a clear duty, but does great injustice to the public, as well as to the individual suitors. The question then being before the Supreme Court, and decided, binds, constitutionally binds, every citizen, as long as that decision remains unreversed. That the opinion of the Court was as stated, is clear from the subjoined extract. After, as is almost universally admitted, an able treatment of the very question, and answering all the grounds upon which the power was placed at the bar, the

Chief Justice concludes in these words: "Upon these considerations, it is the opinion of the Court, that the act of Congress, which prohibited a citizen from holding and owning property of this kind, (slave property,) in the territory of the United States, north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, ever were free by being carried into this territory, even if they had been carried there by the owner with the intention of becoming permanent residents."

With this clear judicial opinion adverse to the power by a tribunal constituted by the great and patriotic men to whose wisdom and virtue we are indebted for the countless blessings of the Constitution, and for the purpose mainly of deciding without appeal, constitutional questions—in order to confine the several departments within their prescribed orbits, and thereby to protect the rights of the United States, the States, and of the individual citizen, he is guilty, whether he thinks so or not, of libelling the memory of the great dead, to whom we owe everything connected with our national renown and unparalleled prosperity as a people, and of violating the Constitution, who refuses obedience to the decision. The Court may review it if the proposition is again properly presented, and if so will no doubt again re-affirm it, as they did in the case involving the constitutionality of the Bank of the United States, Osgood vs. the U. S. Bank, 9 Wheat—unless, which Heaven in its mercy forbid, vandalic efforts shall be successful in maddening the people to strike fatally at this great ark of our safety, by converting it from what it was designed to be and has ever been, a steadfast, independent and fearless, because independent, tribunal, into a partisan assembly, catching at every popular opinion and fashioning its judgments to suit the passing whim of the day. Should such an affliction be visited upon us, the doctrines of the Dred Scott case will not be the only doctrines of the Court which will be disregarded and dishonored. It is impossible to foretell how many constitutional landmarks will be destroyed, or to predict the calamities that would ensue. For a time we might live under them, but ultimately they would bring to an end our very institutions themselves. Supposing then that the question being thus decided, it is to be taken that the Congressional power does not exist, and that this is as clear as if the words quoted from the

decision formed a part of the Constitution itself;—we are brought to the second proposition.

II.—Can Congress prohibit or establish slavery after granting a territorial government. This is also obviously closed by the same decision. The want of power at the antecedent period over the subject, is held to be absolute and not conditional. It is because slave property in the territory was not made dependent upon congressional discretion; the constitution giving, as against Congress at all times, after as well as before a territorial government, the right to the citizen to take such property into any territory of the United States, and enjoy it unmolested by Congress.

The territorial condition remaining, the right continues to exist as far as Congress is concerned. But in thus holding, the Court are not to be considered as having decided that the privilege is given by virtue of any express constitutional provision. Slave property is not even mentioned by name in the fugitive or any other clause of the instrument. We know historically, why it was omitted. The owners of such property were not then as sensitive as they are now. The assaults upon the institution and its supporters, which have been for so many years hurled at both by a body of frenzied or knavish citizens of the States in which it ceased to exist, and that too chiefly by the slaves being sold to the South, have, as their natural consequence, yet more wedded them to the institution, and determined them not only at all hazards to maintain it, but to convince them that it is vindicated upon social, moral, religious and political grounds; and the result, at one time regretted by many southern men, has been to delay indefinitely, if not forever, its abolition in some of the States. In all human probability, but for these attacks, Delaware, Maryland, Virginia, Kentucky and probably Tennessee, would ere this have been without the institution. Climate, soil and staple productions, as well as the sentiment of the people, were leading to the change, when all was frustrated by these irritating, insulting attacks from without. This unfortunate hostility did not prevail at the era of the Constitution, and its effects were therefore unknown. Southern men then advised, and with almost one voice, against the insertion of the word itself in the instrument; and the only clauses that were designed to embrace it are the 1st art., sec. 2, par. 3, and the 4th art., sec. 2, par. 3. With the exception of these, no reference is made to slavery except in the 9th sec. 1st art., which was designed to arrest its increase by giving to Congress the

power to arrest the foreign slave trade, in which certainly no authority can be found to take such property and hold it in a territory of the United States. If this therefore can be done or prohibited, it is equally clear since the Dred Scott case, that the very right is not to be found in any clause of the Constitution. It can only be maintained upon the ground that it is not there prohibited, and not being prohibited, may be said to be allowed. This proposition is not now examined. It will be hereafter.

III.—If there is no power in Congress to prohibit slavery in a Territory, it would seem to be yet more clear that they possess none to establish it. The received opinion everywhere, from the date of the Constitution to the present day, has been that slavery is the creature of positive law. This law may be otherwise than by statute. Every nation has a common or unwritten law of its own, and this may maintain it. But in some mode or other, there must be special laws for its support, as it has been held that natural law disclaims it. Property in man may exist, but he is not by natural law property or the subject of property. Contract may be relied upon, and power resorted to, to create it, but these of themselves do not establish it, unless sanctioned by the law-making power. And it is now too late to question the existence of such a power. Such property has in some form or other in a qualified or absolute sense, existed in almost every nation in the world, and is clearly recognized by our revealed religion. It would be as mischievous to examine too nicely into its justice, as to examine into our title to the country we possess. Such an investigation as this last would perhaps before a tribunal governed by purely moral law, result in shaking it to its foundation, as having originated in unfair contract or unjustifiable force. In the affairs of men some things are to be esteemed as settled and unquestionable. Time, that great conservative element in human society, under the governments of the world, places certain rights of property beyond the intrusiveness of the political "Paul Pry" of the day. These are made to stand undisturbed because of the very antiquity of their origin. They are, because they have been. Custom is their law, "*usus efficacissimus rerum omnium magister.*" Legitimate power may deal with them and modify their character, and in some cases, for the good of the public, abolish them. But until this is done they remain as steadfast as if they had their beginning in the purest morality. This being the case, the power of Congress to establish slavery, must

in direct terms or by necessary or fair implication, be found in the constitution. The only clause which gives any legislative power at all on the subject, except the fugitive clause, is the one referred to, the 9th sec. 1st art., and that is not a power to establish it, but to prohibit its increase. No reading, however latitudinary, can imply from the authority to prohibit, the authority to establish. And beside this, the question must be esteemed as settled by the decision in the Scott case. That judgment evidently treats the entire subject as beyond the sphere of congressional power;—that it is not submitted to the body at all, and is therefore to depend for its establishment or prohibition upon some other power.

IV.—If Congress cannot either prohibit or establish it, can they legislate to protect such property in such a territory? This question certainly can only be answered affirmatively, if slavery exists in such a territory “by virtue of the Constitution of the United States.” If it does so exist, it is certainly within the power of Congress to legislate for its protection. But does it so exist? In a special message by President Buchanan to Congress, he states that “it has been solemnly adjudged by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States.” But the President evidently misapprehended the opinion to which he referred. There is no such doctrine to be found in it either in words or by any fair inference. All that the Court decided, and as to this point it was the only question before them, was that the Constitution did not prohibit the institution, and that it gave no power to Congress to prohibit it. The proposition before them was as to the Congressional power. If they had supposed, as the President imputes to them, that slavery exists in a territory “by virtue of the Constitution of the United States,” they would have been saved all further argument, as, if so existing, it would clearly be beyond the reach of Congressional power. The President’s mistake is in converting the absence of an authority to prohibit it, which was all that the Court held into the existence of a right “by virtue of the Constitution,” to hold unquestioned by territorial power, slave property in a territory. The error, when pointed out, is so obvious, that it must be at once corrected, to the conviction of the merest dullard. The Attorney-General is so dissatisfied with the doctrine, that he at first defended, with some feeling, the President from

the charge of entertaining it. His defence, to be sure, is not such as gives the President credit for legal acuteness. It makes him merely to adopt and not originate it. It is to be regretted that an equal sensibility to the reputation of the Court, had not impelled "the Observer" to vindicate the Court also by showing that they had fallen into no such blunder. This would certainly have proved that although in form it was one of adoption: the President was in truth its real author. But yet justice to the highest tribunal of our country should be done, whoever may suffer by it. "The Constitution, (says the Attorney General,) certainly does not establish slavery in the territories or anywhere else," and "nobody in this country ever thought or said so;" and yet he complains that the Douglas article does injustice to Mr. Buchanan in stating that in his message to Congress he averred "that slavery exists in Kansas by virtue of the Constitution of the United States," when, what he did say "was only that the principle had been adjudged by the highest judicial tribunal known to our laws." The Constitution "certainly does no such thing, and nobody ever thought or said so," says Mr. Attorney, and yet his complaint is, that the President was made so to say, when what he did say was, that the Supreme Court had not only so thought, but so said, in a solemn judicial opinion. To vindicate the President by displaying his ignorance, may be the only vindication the case admits of, but it does more credit to the candor of his friend than to the President's intelligence. But since the "Observations" were published, Mr. Attorney, in an Appendix to a new edition, changes his ground. In this the entire ground of censure of the course of Judge Douglas for not correctly quoting the President, is surrendered. It is here said that the President only stated, that slavery *exists* in Kansas "by virtue of the Constitution," which is not saying that it is by the authority of the Constitution *established* there. "We are in the wrong, (says Mr. Attorney,) if the expression that a thing *exists* by virtue of the Constitution, is equivalent to saying that the Constitution *establishes* it." Is not this most superlative hypocrisy? What is it that is said to exist? Slavery. Where and how? In the territory, and by virtue of the Constitution. What then takes it there and retains it there in opposition to congressional or territorial or other power? The Constitution of the United States. If so, is it not then there established by the authority which attends it? No, says Mr. Attorney, it is not established

there by that sanction, but only so exists there. What is "to establish?" Lexicographers tell us, "it is to fix unalterably," and yet, although slavery is in Kansas by virtue of the Constitution, and is there by the same power fixed unalterably, it is not established, but only there so exists. This may be acute, but it defies ordinary comprehension. To such it must appear to be but the technicality of a special pleader pushed to the very verge, at least, of quibbling. Certainly it was due to the Supreme Court to suggest that this distinction and its apparent absurdity are not to be attributed to them. In truth, the President's authority to the contrary notwithstanding, and though this is now in the Appendix impliedly endorsed by Mr. Attorney, the Supreme Court never intended to announce the doctrine in either form of expression. It is altogether an executive impression and blunder, not less original than erroneous. But what makes the attempted distinction the more idle is what follows, the clause which the Attorney gives of the message, but which he does not give, but lets the reader to find as best he may. It is this: "Kansas is therefore at this moment as much a slave State as Georgia or South Carolina." That is to say, the existence of slavery in Kansas by virtue of the Constitution is fixed, and established there as it is fixed or established in either of those States. Is not slavery an established institution in Georgia or South Carolina? Does it exist there only in contradistinction to being established? The question is too ridiculous to be suggested, and it would not be done but for the respect due to the highest law officer of the government. Authority has sanctioned many an absurdity, but in this instance it is so gross as to be beyond its power. "Exists," as used by the President, is an equivalent term with "established," and no fair mind can read the whole paragraph without concluding that its author designed to express precisely the same idea. And it is equally clear from the manner in which the "Observations" treated the subject, that the distinction maintained in the appendix, was an after thought to which the Attorney was driven by the exigency of his controversy.

"Slavery then not being so established, has Congress the power to protect it by legislation? The negative of this proposition would seem necessarily to follow from the principles upon which the case of Scott was decided, if not from the very terms of the decision. Why is it that there exists in Congress neither the power to establish

nor prohibit the institution? It is because, in the judgment of the Court, the territorial clause, if applicable to after acquired territory, as they held it was not, did not give the power, and because the power to acquire territory and to hold and govern it, to be implied from the power to acquire, did not impart it. It was a subject not within the legitimate scope of either source of authority. The first did not embrace it at all, and the second could not by any just or fair implication be made to do so. Such being the view of the Court, it clearly follows that to legislate to protect the institution, is as much beyond the congressional authority as to legislate to prohibit or establish it, and consequently all of them are amongst the powers "reserved to the States respectively, or to the people."

V.—The remaining and last question I propose to examine, is: Can the territorial government admit, protect or exclude slavery at any time during its existence?

1. It would seem to be an anomaly in our institutions if these powers do not exist. That slavery, an artificial instead of a natural condition, should be beyond the reach of human power, under any form of government, and should be admitted, protected or excluded in violation of the wishes of the people with whom it is or is to be, and in disregard of the wishes of all branches of the government, and of all general or local power, is a doctrine so extraordinary that it almost defies human judgment. No proof short of demonstration can be given to bring such judgment to a satisfactory conclusion in its support; and when we reflect on the length of time during which this state of things is to prevail, the doctrine becomes yet more startling. The territorial government may exist as long as the will of Congress shall have it exist. Admittance as a State into the Union, depends on congressional discretion. No population, however large, or other condition, gives legal title to such admission. The language is: "New States *may* be admitted by Congress into this Union." The territorial State may thus be practically made perpetual, and no power be found anywhere to put an end to African slavery. What renders this hypothesis still the more extraordinary is, that in 1787, when this great charter was adopted, such slavery even for its peculiar labor, had comparatively but a slight hold on the public mind, and little if any on the moral sentiment of the South or North; indeed it is not to exaggerate to say that the repugnance to it with Southern statesmen was then much greater than with the statesmen of the

other States. In some of the latter the trade was proving a fruitful source of pecuniary profit, which they or the people were as unwilling to surrender, as the people of Liverpool were, at one period, as evidenced by their long continued untiring efforts and unceasing zeal to defeat the abolition of the slave trade, by the English Parliament. It is impossible to believe that such men designed to place this then almost universally admitted blot beyond the possible reach of removal. Feeling as they then did, that it was a wrong, and in every way mischievous, it never could have been their purpose to perpetuate it. They could not but have supposed it would be within the reach of some power, and if not to be found in Congress, *as is now decided*, where else can it be but with the people in whose midst the wrong is found. It has however been thought, and this too by gentlemen of unquestionable ability, that the Supreme Court, in the case so often referred to, has decided that such power does not reside in a territorial government. This, it is submitted, is a misconception of the decision. The single question before the Court in this connection, was, whether Congress possesses the power to prohibit the introduction of slave property into a territory. In ruling it adversely, the Court does not say, or intimate that such property in a territory, has other safeguards, or that the owner is entitled to any further protection in its enjoyment, than exists in regard to other kinds of property. A sentence or two from the opinion of the Chief Justice will, it is believed, make this plain.

It had been contended that there was a peculiarity in slave property, that placed it on a different footing from other property. For this the laws and usages of other nations, and the reasoning of statesmen and jurists upon the relation of master and slave, had been referred to. These, says the Chief Justice, cannot "enlarge the powers of the government, or take from the citizens the rights they have received;" and as "the Constitution recognizes the right of property of the master in a slave, and makes NO DISTINCTION BETWEEN THIS DESCRIPTION OF PROPERTY, AND OTHER PROPERTY owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, HAS A RIGHT TO DRAW SUCH A DISTINCTION, or to deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government;" and, after referring to the fugitive clause as

expressly "affirming the right of property in a slave," the Chief Justice thus concludes: "And no word can be found in the Constitution WHICH GIVES CONGRESS GREATER POWER OVER SLAVE PROPERTY, OR WHICH ENTITLES PROPERTY OF THAT KIND TO LESS PROTECTION THAN PROPERTY OF ANY OTHER DESCRIPTION." All, therefore, that the Court has decided, is that slaves are property, as much so as any thing else that may be owned by man, and that such property is entitled to the same—not to less or greater—constitutional guarantees as any other description of property. This being obviously the doctrine of the Court, it necessarily follows, that whatever a constitutional government can do in regard to any other kind of property, it can do in regard to this. If any other kind may be excluded, this may be excluded; if any other kind may be more, or less, or not at all protected by legislation, the same is true as to this. If any other, after its legal introduction, can be, upon public grounds, excluded or abolished, it is also the case as to this. It is but sameness, identity of title and protection, which the Court maintains, not inferior or paramount—that all stand on the same footing, liable alike to the same restrictions and limitations, and entitled to the same guarantees. What is there in this species of property to exempt it from territorial legislative power? What is there, to make it the peculiar and single duty of such a power to legislate for its admission or protection? If it be but property, and, as such, only embraced by constitutional guarantees, it must share the condition of all other property, and therefore be subject to the legislative power. If this is not true, the territorial State would be almost without laws,—be one of nature. The peace and prosperity of the people depend upon laws defining and regulating property. Without such a power, property itself would be in a great degree out of the pale of protection. But if the power exists, it must depend upon those who possess it, how they will, in any particular case, exert it, or whether they will exert it at all. These must rest with their intelligence and sense of duty,—Congress has no power but to recognize the territorial government, a power which is theirs for the same reason that proves the power, in the first instance, to create it. Nor can it be properly said, that the authority thus contended for exists upon the assumption that sovereignty "resides with such a people." If by sovereignty is here meant an absolute and paramount power over all other power, it certainly is not possessed. But if it is used in a restricted sense, as

involving only the power to do the things supposed, when legislative power is granted to them, in relation to their own internal concerns, subject to the prohibition to be found in the Constitution, and which, in the language of the Court in another passage of the opinion, in some instances "it would be more advisable to commit" to them, as being the most "competent to determine what was best for their own interests," then certainly such sovereignty is theirs. And this, and this only, is the sovereignty contended for by Judge Douglas in his article in Harper. The Attorney-General might have saved himself the trouble of searching the speeches and writings of the Judge, with a view to disprove, upon his own authority, that sovereignty, in its more comprehensive meaning, did not reside with such people. The article itself, which was so critically and, no doubt, with intended fairness observed upon, would have answered his purpose. The right there asserted was stated as pertaining "to the people collectively, or as a law-abiding and peaceful community, and not to the isolated individuals who may reside upon the public domain in violation of the law, and such as can only be exercised when there are inhabitants sufficient to constitute a government, and capable of possessing its various functions and duties, a fact to be ascertained and determined by Congress;" and that then it was a right to be exercised, "subject to the Constitution of the United States." That a power, whose very existence depends on some other authority, and which is to be used in subordination to admitted paramount control, is not sovereign, in the sense imputed by the Attorney-General, is too obvious to need proof. The whole doctrine of the article is inconsistent with such an assumption, and the error of construing it otherwise can only be ascribed to that general failing, which often is the weakness of a controversial writer. The power claimed is exclusively that which belongs to a legislative authority, granted without limitation as to any particular subject of legislation, and by an authority which has no congressional jurisdiction to impose a limitation, and which, therefore, knows no restriction, except such as is common to every other kindred subject. In this view, and in this only, is it a sovereign power, a power, in the language of the Supreme Court, "to determine what is best for their own interests," or in that of Judge Douglas, that which belongs to a title, "to all the rights, privileges and immunities of self-government, in respect to their local concerns and internal polity, subject only to the Constitu-

tion of the United States." He who contests these propositions, or their application to slave property, is bound to establish that such property has other guarantees, and is entitled to other rights than belong to other property. Such a task is beyond the reach of any conceivable reading of the Constitution, and is, consequently, a hopeless undertaking. At its date the repugnance of slavery to the public sentiment of the time, the general wish for its ultimate extinction, the provision to arrest, in a few years, its increase, and the absence of any other special power in relation to it, it may be considered as clear, that a proposition in the convention to secure it by other guarantees, than such as were provided for other property, and, more particularly, with such as would greatly delay, if not prevent its extinction, would, perhaps, not have received the support of any member of the body. Certain it is that no suggestion of the kind was made, and that this property stands but secured by the provisions which equally embrace and protect all other kinds. As has been seen, this doctrine is not only not inconsistent with the opinion of the Supreme Court, but maintained by its principles.

It is now proposed to shew that it has the clearest congressional, and democratic, and executive sanction. As to the first, this might be done by an examination of the compromise of 1850. The terms of that legislation, and the grounds upon which it was supported and opposed, from its proposal to its consummation, would, it is submitted, without other proof, establish the fact of such a sanction. But it is sufficient for the purpose to refer to the ensuing legislation of 1854. The Kansas-Nebraska Act,—the principles of that Act, as it was passed, and those of the Senate amendments, proposed and advocated by Judge Douglas, and his opposition to the antagonistic propositions offered by the Senators from the States in which slavery does not prevail, all demonstrate that he, and those who agreed with him, then claimed for the people of a Territory the very right for which he now contends,—the right, without other restrictions than the Constitution contains, to legislate concerning slave property, as a concern belonging to them, during their territorial condition, in like manner as they could legislate concerning other property. And, whatever doubts might then have prevailed, as to the establishment of this right by the principles of the former compromise, it is not for those who concurred with the Judge, and

voted for the passage of the last Act, now to deny that such Act, as far as such property was involved, but carried out the doctrine of the former, now to deny that the doctrines so carried out involve the power, which the words used in it clearly include. Nor is it for those who opposed the latter Act, on the very ground that such would be its effect, and proposed amendments to avoid it, now to maintain that such is not its operation. What then is the meaning as to this question of the Kansas and Nebraska Act? Does it maintain Judge Douglas's doctrine? Unless language has lost its use, and serves only to mislead and delude, no other meaning can be given to it. Before quoting it, let us see the state of things existing, when the Act was under consideration. The admission of slave labor into the Territories, and the right of Congress to prevent it by particular prohibition, were agitating the nation. The hopes of those who with patriotic motives devised the compromise of '50, were not fulfilled.

The Territories now to be organized, of Kansas and Nebraska, again presented the disturbing question. The consultations in both branches of Congress were warm and exciting. The advocates of restriction and its opponents alike, displayed great ability. From day to day, in the Senate particularly, propositions were offered, presenting in various forms the views of each. The friends of State equality, from the States where slavery did not exist, as well as Southern Senators, and who were equally desirous of freeing Southern States from this badge of degrading inferiority, implying disgrace, because imputing injustice and wrong, zealously labored to effect their object; and this, in the opinion of almost every Southern member, would be effected by the last amendments suggested by the Committee on Territories, of which Judge Douglas was chairman, in their report of the 4th of January, 1854. After stating what they supposed were "the principles established by the measures of 1850," and how these had served to allay agitation, and restore peace and harmony "to an irritated and distracted people," they said: "In the judgment of your committee, those measures were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory. THEY WERE DESIGNED TO ESTABLISH CERTAIN GREAT PRINCIPLES, WHICH WOULD NOT ONLY FURNISH ADEQUATE REMEDIES FOR EXISTING EVILS, BUT IN ALL TIME TO COME, AVOID

THE PERILS OF A SIMILAR AGITATION, BY WITHDRAWING THE QUESTION OF SLAVERY FROM THE HALLS OF CONGRESS AND THE POLITICAL ARENA, AND COMMITTING IT TO THE ARBITRAMENT OF THOSE WHO WERE IMMEDIATELY INTERESTED IN, AND ALONE RESPONSIBLE FOR, ITS CONSEQUENCES. WITH A VIEW OF CONFORMING THEIR ACTION TO THE SETTLED POLICY OF THE GOVERNMENT, SANCTIONED BY THE APPROVING VOICE OF THE AMERICAN PEOPLE, YOUR COMMITTEE HAVE DEEMED IT THEIR DUTY TO INCORPORATE AND PERPETUATE IN THEIR TERRITORIAL BILL, THE PRINCIPLE AND SPIRIT OF THOSE MEASURES;" and the amendment which was recommended and adopted to accomplish this object, with a proviso offered by Mr. Badger, was in these words:—"That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6th, 1820, WHICH BEING INCONSISTENT WITH THE PRINCIPLE OF NON-INTERVENTION BY CONGRESS, *with slavery in the States and Territories*, as recognized by the legislation of 1850, commonly called 'the Compromise Measures,' is hereby declared inoperative and void, IT BEING THE TRUE INTENT AND MEANING OF THIS ACT, NOT TO LEGISLATE SLAVERY INTO ANY TERRITORY OR STATE, NOR TO EXCLUDE IT THEREFROM, BUT TO LEAVE THE PEOPLE THEREOF PERFECTLY FREE TO FORM AND REGULATE THEIR DOMESTIC INSTITUTIONS THEIR OWN WAY, SUBJECT ONLY TO THE CONSTITUTION OF THE UNITED STATES, provided that nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the Act of the 6th of March, 1820, either protecting, establishing, or abolishing slavery." The prohibitory section of the Missouri Act of the 6th of March, 1820, was for the reason alleged, repealed, and the principles and motive of the repeal stated to be, to effect the true intent and meaning of Congress, and which was declared to be twofold; first, "not themselves to legislate slavery into any Territory or State, nor to exclude it therefrom;" second, to leave the people thereof perfectly free to regulate their own domestic institutions, in their own way, subject only to the Constitution of the United States. The bill as thus amended was passed by the Senate by a vote of thirty-seven to fourteen, the majority including every South-

ern Senator present, except Mr. Bell, of Tennessee, and Mr. Houston, of Texas, and twelve Senators from the other States; and on the 22d of May, after a long and able discussion, it was passed by the House, by a vote of one hundred and thirteen to one hundred, there being in the majority every Southern member but seven, and most, if not all of these were opposed to it, not because of the principles contained in the particular amendment quoted, but on other grounds. Unless words be used, as dicens oaths, to deceive, and Congress intended by false pretences to delude, is it not clear that this amendment declared, and sanctions the doctrine of popular sovereignty as maintained by Judge Douglas? That doctrine is, that a territorial government has a right to legislate in relation to their local concerns and internal polity, subject only to the Constitution of the United States. The amendment declares its very purpose to be, "to leave the people thereof (a territory) perfectly free to form and regulate *their* domestic institutions in their own way, subject only to the Constitution of the United States;" and this purpose was especially avowed in regard to *slave property*. Such property indeed gave rise to the very agitation which it was the object of Congress to terminate. That alone constituted the danger in which the country was supposed to be, and consequently the principle was the more particularly prepared to meet that danger. It was decided to leave the people perfectly free to regulate it as a domestic institution of their own, in their own way. It declares, first, what is not the intent and meaning of the act: "It is not to legislate slavery into any State or Territory, nor to exclude it;" secondly, what was its intent: To leave it as a domestic institution to the people, to be settled in their own way, with no other restriction than the Constitution of the United States may impose.

One or the other of these two conclusions is inevitable. That if Congress believed they had the power themselves to legislate upon the subject, they thought it wiser to surrender it to the people of the Territory, or that they believed that they had not the power, and declared it to be in the people, so as to settle all doubts as to the right of the latter to exercise it. The power which, upon either hypothesis, they refused to exert, was to legislate slavery into any Territory or State, or to exclude it therefrom; and that which they declared to be in the people, was the power "to legislate slavery into or exclude it from such Territory or State." It will be seen, too, that in this regard, the people of a Ter-

ritory are placed in the same condition with the people of a State, and that the power in question is not more disclaimed as to the latter, than as to the former, and that the power left to each, is left in the same terms and to the same extent. Whatever, therefore, under this act, the people of a State can do, the people of a Territory can do,—the sole limitation upon the authority of either is declared to be in the Constitution of the United States. What is the extent of such limitation? Taking private property for public use without compensation, or the implied one of prohibiting the ingress into the Territory of private property? Is either more applicable to an organized Territorial government than to a State? Is private property appropriated to public use by laws abolishing slavery, or prohibiting the right to bring such property into either? Certainly not,—such legislation is to be found, to a greater or less extent, in almost every State in the Union, and no one has had the temerity to call it in doubt. This was, of course, known to Congress in '54, and they could not, therefore, have imagined that the validity of such legislation could be questioned on any such constitutional ground. They thought that slavery was a domestic institution, merely depending, for its existence or exclusion, upon the legislative will of those with whom it was, or was to be domiciled. They, therefore, not only did not except it from the will of the people, who were to be left "perfectly free to form and regulate" their domestic concerns "in their own way," but, in language so unambiguous as to admit of but one interpretation, it was evidently that very institution which induced them to declare this principle of popular sovereignty. This view, if possible, becomes the more apparent, when we consider the object and effect of the Badger proviso. The Territory to be organized was slave territory when admitted into the United States. Such property was then known to the laws of France and Spain, and had been for years, and was held within the territory at the time of cession. If Congress had the power to pass the 8th section of the act of the 6th of March, 1820, (the Missouri Compromise,) such laws were by that section repealed, and the entire territory north of the prescribed line, thereby permanently devoted to free labor, whatever might be the wishes of its people. This, of course, would not have left them "perfectly free to form and regulate that" domestic institution "in their own way," and it was therefore necessary, in order to consummate the policy of the act, to annul the restriction, and this

was expressly done by the amendment of the Committee. But Mr. Badger, an acute and able lawyer, as well as an enlarged and conservative statesman, saw, or thought he saw, that some further provision was necessary to attain the object. He, evidently, supposed that it might thereafter, upon a principle known to the books, be contended that the repeal of the restrictive section, without more, would but revive the laws of the country, whatever these were at the date of the enactment of that section, and thus revive the agitation which the majority were so anxious to extinguish forever. To guard against this, he proposed his proviso, declaring "that nothing herein contained should be construed to revive or put in force any laws or regulations, which may have existed prior to the act of the 6th of March, 1820, *either protecting, establishing, or abolishing slavery,*" and it was adopted by a vote of thirty-five to six. Every Senator from the free States, except Gov. Dodge, of Wisconsin, voting in the affirmative, and but five Senators from the slave States in the negative, and these were Messrs. ADAMS and BROWN, of MISSISSIPPI, JOHNSON and SEBASTIAN, of ARKANSAS, and RUSK, of TEXAS. The purpose of this amendment, its sole purpose, was to submit the very question of domestic slavery to the people of the Territory, untrammeled, as a domestic institution of their own, which Congress was either without the power to control, or was resolved not to control. It was to be theirs, to be disposed of "in their own way," as the same is disposed of by the people of a State; that is to say, it was for them "to legislate it into, or exclude it" from, their Territory. All antecedent laws existing before that of 1820, inconsistent with such a right and power, were, by the proviso, repealed, as, by the original amendment, was repealed the interfering section of that Act. It was esteemed to be not only their true policy, but to be as just as it was true, to leave the question to the Territorial people, and to leave open for emigration the Territory to every citizen of the United States, without being subject, in regard to slavery, or any other domestic institution, to congressional mastery, but only to that authority which, in the language of President Buchanan, in his letter of acceptance, hereafter more particularly quoted, is "derived from the original and pure fountains of legitimate political power, the will of the majority." It is manifest, that neither the mover of the amendment, nor any member of either House, then supposed that the Constitution would either establish, or cause to

exist, or protect, or prohibit slavery in the Territory, if the local laws prohibiting or authorizing it, which prevailed at the date of the cession to the United States, were revived. If such an opinion was then entertained, the amendment, in its body as well as the proviso, would have been merely idle and nugatory legislation. Since, if that was the case, the law neither could give nor take away the constitutional right to move and hold slaves in the Territory. It was, on the contrary, the design to submit that right to the judgment alone of the Territorial government, and, with that object, to remove all possible objection to its exercise, by annulling the entire local law regarding it, whatever that might be, whether to be found in the Act of 1820, or in the antecedent laws of France and Spain.

But if there can be no legislation by the territory, what law is to regulate the rights and to furnish the remedies? Are these to be as various as are the laws of the several States from which the property was taken? Are the rights to hold and dispose of such or any other property, to depend on such laws? Then, an emigrant from one State might sell each slave single, whilst one from another could not sell at all, or sell if the sale separated man and wife, parent and child. In one case slaves would be liable to execution for debt in the life time of the owner, or to sale at his death, for payment of his debts or distribution, and in the other not. In one they would be subject to a judgment lien, in the other not. In one the children of a slave mother might belong to her owner, in the other not. In one they might be free, in the other not. In one trover might be the remedy, in the other not. In one resistance by the slave to the owner might be punished with death, in the other not. In the one the mode of feeding, clothing and working might be prescribed, in the other not. In the one color might be presumptive evidence of slavery, in the other not. In the one slaves might be considered as real estate, and so to be disposed of, during life or at death, in the other not. And what is true as to this species of property, is true of all. Its title may originate in the State whence it came, but its regulation, its continuance and its protection must depend upon the laws of the place where it is. When there exist in such a place a legitimate legislative power, unrestricted except by the Constitution of the United States or a State Constitution, it is subject to such power. Being property as long as the Territorial existence remains, it cannot be confiscated or appropriated to public

use without compensation. Nor is there in Judge Douglas's paper a word, fairly considered, tending towards a different doctrine. The introduction, in the future, of slavery into the Territory, may be prohibited. But this is not public appropriation of private property. It is not denied that this can be done by State power, although beside the prohibition in the Constitution of the general government, there is a like one, it is believed, in the Constitution of every State. Why then, as must be admitted, is it in that case legitimate? Because it is a fit subject of legislative power, and is not within the words or object of such a prohibition. The same thing is equally true of every other species of property. Gambling may be authorized, and its implements, its cards and its dice, be property in a State. Can these be taken to an organized territory and there held and used in defiance of its legislative power? Polygamy may be legal in a State, there being nothing in the Constitution of the United States against it, and the issue of each marriage, legitimate; can the husband take his two or more wives into such a Territory, and there live with them all, and his children there be legitimate heirs to his estate in equal defiance of its legislative power, and the public sentiment of its people? Lotteries are lawful now in some States, and may be made so in all, should the promptings of a just and moral policy, now so general, cease to prevail. Can the dealer take into such a Territory the emblems of his trade, property, where he emigrates from, and vend them in defiance of Territorial power, and the almost unanimous wish of its people? In some States a dog may be property, in some not. Has the emigrant from New York, where it has recently been judicially decided that a dog is property, the envied constitutional privilege to take with him his dumb companion and friend and servant, and to enjoy his society and the fruits of his labor, not only unquestioned by Territorial power, legislative, executive or judicial, but with the duty of each and all to protect him? and has the emigrant from South Carolina, where such property may not be recognized, no such right? If there be such a disparaging and unjust distinction, it is almost a just cause for rebellion. But if the doctrine be sound, how is it practically to operate? The laws of the several States are often, and may even be on the same subject, conflicting. This conflict must give rise in the Territory to constant controversy incapable of judicial adjustment, if but the one law is observed. What

is to be done? Can any peaceful results be attained? Certainly not, if both laws are to be equally regarded, and what then is inevitable—confusion and violence; and then too what a singular appearance would an edition of their statutes and common law present; what a heterogeneous mass its contents. Its title would be, the statutes and other law of the Territory; open it and you find statutes of Massachusetts and of Georgia, of Pennsylvania and of Mississippi, and of the common law of each, with a head note that these apply respectively only to the citizens who have emigrated from such State. That he is still, and must remain not only against the will of the Territorial government, but his own, as to all his rights and obligations, a citizen of Massachusetts or Georgia, Pennsylvania or Mississippi, until the period shall arrive when all will be merged into one people, to be governed by the laws of their own adoption, through the necromancy of a State Constitution, the only remedy for the inconsistencies, the absurdities, and the paralyzing effects of the doctrine that Territorial legislative power has, if any, a most limited sphere for its operation. In fact the more the principle is examined, the more untenable, if not absurd, it appears.

Will any man with any regard to his reputation, whether he has mastered the primer of political science, or not, answer these enquiries in the affirmative? If such a one is to be found, he can point to no other dialectics as the source of his error and his apology, than those of the Attorney-General. In a word, the whole question resolves itself into this:—What is legislative power? What are its legitimate objects? If property, its existence, its regulations and its uses, and its protection by law, subject only to such constitutional limitations as may exist, is not, then is it divested not only of one but of its chief elements, its very life blood. It can then deal only with man, his physical efforts, his mere animal capacities, and hardly at all with his moral nature and its obligations, and not at all where these involve property and its application.

The Attorney-General, in his Appendix, tells us that "no one who has mastered the primer of political science," will deny that a government unrestrained and unchecked by any constitutional prohibition, has "the power to confiscate private property, even without compensation to the owner." That this power can only be obviated by limitation, and that this is accordingly done in the Constitution of the United States, and in every State Constitution. Is

this so? If it be, the present writer has not mastered the primer. Are there no great principles of justice which lay at the foundation of every form of society, and fashion and control it without express incorporation, into its organic law? And if there be, is it not one of them that private property cannot be taken for public use, without compensation? Such principles may be violated. Property may be confiscated, and persons too imprisoned and executed without cause, in the mere gratification of a tyrannical will. *Ex post facto laws* may be enacted and enforced, and acts declared a crime, which in the eye of man and of God were not only not criminal, but laudable when they occurred. But are these justified? There may be no physical power to resist them, but are they on that account, in human or divine judgment, legal? Are they not restrained by a voice which in the eye of civilization is mightier than armies, the voice of justice issuing from the "bosom of God," to preserve "the harmony of the world." Could then such acts be perpetrated without redress, had there been no such prohibition in the Constitutions of the several States, and of the general government. Chief Justice Marshall, who, Mr. Attorney perhaps will admit, had at least mastered the "primer of political science," in the case of Fletcher and Prate, 6 Cra., speaking too for the whole court, his co-students of the same primer, says:—"It may well be doubted whether the nature of government and society does not prescribe some limits to a legislative power, and if any be prescribed, where are they to be found, if the property of an individual fairly and honestly acquired, may be seized without compensation."

The historical reference too, of Mr. Attorney, it is submitted, he clearly misapprehends. "Great charters, bills of rights and constitutions to limit the sovereignty" of the governments under which our Saxon ancestors lived and suffered, were obtained because the title to them was to be found "in the nature of society and civil government." In the judgment of all after times, and of the great and good men of the day, it was on this ground, that the labors, plans and battles of our English ancestry, "during seven hundred years," commended them to just approval and admiration. It is because sovereignty is not "in its nature irresponsible and absolute," that the money and blood spent to restrain it, were vindicated in the eyes of a civilized and enlightened world. To consider the example otherwise, and as teaching the lesson which Mr. Attorney reads us, is

to bring to its application rather the logic and philosophy which belong to a plodder in special pleas, than the enlarged and liberal views which attend the researches of the historical student and statesman. The great charter and bill of rights were claimed and acquired because the principles of political and civil freedom contained in them, were our ancestors' before and independent of such recognition. These date not from charters and bills of rights, but from "the nature of society and of government." In this latter they are inherent as the birth-right of the social man.

But if in this age of the world, such a doctrine could exist anywhere, can it prevail with us? Our institutions are redolent of freedom. For freedom, our ancestors, during seven years of trial, fought, bled and died. It was her teachings that inspired and supported them during their fearful struggle. By them, no sovereignty was recognized in any form of government that might be adopted, which could legitimately act on property or persons without the restraint of these just principles of justice and society, in which alone society can be enjoyed or tolerated. These they well knew must be the implied conditions of all social power, and as effectual to limit and restrict it as if in words repeated again and again, in its particular constitution. If this be not so, they also were not "masters of the primer of political science." In such company it is pleasant to err, even though the error shocks the learning and profound researches of a high law officer, who, his friends imagine, has traversed the whole of the circle of the science, and sounded its depths as well as its shadows.

It has also democratic sanction, and in a form and under circumstances that no member of the party loyal to his faith, and no member of the present administration, can consistently repudiate. That party, by its National Convention, held in Cincinnati, in 1856, by the unanimous vote of the members from every one of the States, declared:

"The American Democracy recognize and adopt the *principles* contained in the organic laws establishing the Territories of Kansas and Nebraska, as embodying the *only sound and safe solution* of the 'slavery question,' upon which the great national idea of the people of this whole country can repose in its determined conservatism of the Union—*non-intervention by Congress with slavery in State and Territory, or in the District of Columbia*.

"That this was *the basis of the Compromises of 1850*, confirmed by both the Democratic and Whig parties in National Conventions—ratified by the people in the election of 1852—and rightly applied to the organization of the Territories in 1854; *That by the uniform application of this Demo-*

*cruel principle to the organization of Territories, and to the admission of new States, with or without domestic slavery, as they may elect, the equal rights of all will be preserved intact—the original compacts of the Constitution maintained inviolate—and the perpetuity and expansion of this Union insured to its utmost capacity of embracing in peace and harmony any future American State that may be constituted or annexed with a republican form of government.”*

Can it be said, that they merely meant that slavery might be introduced or excluded by the people of a Territory, when assembled to form a State government, when no one ever doubted that power, and that, to such time, it was to exist there by virtue of the Constitution of the United States, not only entirely exempt from their control, but with an obligation, on their part, to protect it by legislation? Was that the democratic “principle in the organization of Territories,” which they designed to approve? Was that the only sound and safe solution of the slavery question, upon which the great national idea of the whole country can repose, in its determined conservation of the Union, “non-intervention by CONGRESS with slavery in State and Territory, or in the District of Columbia?” Did the delegates from the free States suppose that, that only was the meaning of their declaration,—that slavery is to exist in each Territory, notwithstanding the political or conscientious repugnance of the people? Was that the feast to which they had been invited, and to which they invited their constituents? Was that, in the honest judgment of the Convention, the panacea whose wisdom and result were attested not less by its “salutary and beneficial effects in allaying sectional agitation, and restoring peace and harmony to an irritated and distracted people, than by the cordial and almost unanimous approbation with which it has been received and sanctioned by the whole country,” “that slavery exists in Kansas by virtue of the Constitution of the United States, and that Kansas is, at this moment, as much a slave State as Georgia or South Carolina?” Imagine a delegate crazed enough to have proposed, as an amendment to the approved doctrine, “non-intervention by Congress with slavery in State or Territory, or in the District of Columbia,” this proviso as a reason for non-intervention, “that Kansas and Nebraska, by virtue of the Constitution of the United States, are now” as much slave States as Georgia or South Carolina. How, think you, would it have been treated, and how many votes, South or North, would it have commanded? Would not every corner of the Hall have resounded with a unanimous and indignant negative?

And yet, by a monstrous perversion, portions of the party, and the Attorney-General, now endeavor to attribute to the Convention that very meaning. Had this been then avowed, how many votes in the free States would have been cast for the nominee of the Convention? Is any man wild enough to believe that he would have received the vote even of the State of his nativity, his ever-constant admirer and supporter? As it was, the declaration of congressional non-intervention which he endorsed, though complied with the clear avowal of it, in the sense contended for by Judge Douglas, of "popular sovereignty," nearly cost him her support, and yet more endangered his success in the other free States, where there prevailed for him no particular regard or admiration. His hopes, and those of the democracy, as it was, were nearly shipwrecked; how utter and enduring would have been the disaster, had the Convention, or had he, in his letter of acceptance, declared that, by the principles of his party, as thus authoritatively announced, "slavery existed in Kansas, and that it was as much a slave State as Georgia or South Carolina!" As it was, comparatively a mere youth, with no reputation as a statesman, with no public service to have enabled him to become one, with no hold, in any State, upon the popular heart, and with no particular claims upon public confidence, was near winning the prize of the contest. What contest would it have been, if the doctrine now attributed to the Convention, and, under gross misapprehension, afterwards proclaimed by the President, upon the authority of the Supreme Court of the United States, and as right in itself, and now endorsed by his Attorney-General, had been then declared? It would hardly have merited the name of a contest. The majority for Col. Fremont, it is no exaggeration to say, would have been larger than was ever given in any former serious struggle. If this be so, and what fair man will deny it, how unjust to those who supported Mr. Buchanan, how abusive of the confidence which they reposed in the fair dealing and frankness of himself and of the Convention in regard to this very slavery question, now that the victory is won, to be told by him and his law officer that they had been deluded, that the language of the Convention, and his own, did not mean what every unsuspecting and intelligent man throughout the canvass was known to have attributed to it, but that it had another, and a totally different, though carefully concealed, meaning, which, had it been apparent or disclosed, would have been almost universally disapproved

of by them. What sorry return for consistent, zealous and persevering efforts to elevate the incumbent to the highest and most dignified office known to man!

*Third:* The executive sanction to the doctrine of Judge Douglas, proposed to be shewn, (and which has been in part anticipated,) is as obvious as the Congressional and convention or party sanction. 1. The approval of the act of 1854, by President Pierce, evidences his sanction, nor as far as the writer knows, does that distinguished statesman now, nor has he at any time stated that his interpretation was not its popular and received one, and certainly, as has been shown, that was the sense in which it was considered by the subsequent national convention. But beside his approval of the act, his opinion of its principle is more distinctly given in his special message to Congress, of the 24th January, 1856, relating to Kansas. He there says: "The Act to organize the Territories of Nebraska and Kansas, was a manifestation of the legislative opinion of Congress on two general points of constitutional construction." The first has no bearing on the present discussion, but the second was said to be, "*that the inhabitants of any such Territory, considered as an inchoate State, are entitled, in the exercise of self-government, to decide for themselves WHAT SHALL BE THEIR OWN DOMESTIC INSTITUTIONS, subject only to the Constitution, and the laws enacted by Congress under it,* and the power of the existing States to decide, according to the provisions and principles of the Constitution, at what time the Territory shall be received, as a State, into the Union." Can the most refined ingenuity construe this as meaning any thing else than the very doctrine of Judge Douglas, which the Attorney-General is now, with more zeal and ingenuity than true regard for the reputation of President Pierce, assailing? One of the only two limitations to which alone, the President says, the power of a Territorial people is subject, demonstrates that it is to be exercised during the Territorial condition, and during that condition alone. Congress is to decide at what time the Territory is to be a State of the Union, and for all the time previous to such decision, says Mr. Pierce, if his words have any meaning, the Territorial people are considered as an INCHOATE STATE, and entitled, in the exertion of self-government, to determine for themselves what shall be their own domestic institutions. The particular institution, indeed the only one, that led to the legislation, it is to be remembered, was domestic slavery, and upon this, says

the President, Congress had given the people the power to "determine for themselves as a right," in the exercise of self-government, "belonging to them as an inchoate State," and, because of such State's existence, consequently, from its origin to its extinction. The principle which he is said to have then intended, is, that the power is possessed only when such a people meet in Convention to establish a Constitution, in order to be admitted as a State into the Union. If this be so, it is clear that the President was opposing a mere figment of his own brain. Who, either wise man or fool, ever imagined that such a power as that did not exist? A State Constitution necessarily implies State sovereign power, and such power, and for the very reason that it is State power, includes the power to deal as it sees fit with slavery or any other domestic institution. Such was not the question which was then troubling the public mind. It was the one which, in this particular, the Territorial condition presented, and upon that question, if the President designed what he said in his message of January, 1856, if he designed sincerely then to express his real opinion, it was that the "constitutional construction" evidenced by "the legislative opinion of Congress" in the Kansas and Nebraska Act; was, that upon this question of domestic slavery, the right and power of a Territorial people were the same with the right and power of the people of a State. 2. Of Mr. Buchanan's sanction, his letter of acceptance of the 16th of June, 1856, furnishes conclusive evidence. After alluding to the agitation by which the question "of domestic slavery" had too long distracted and divided "the people," and stating that it seemed to be "directed chiefly to the Territories," and anticipating that it was "rapidly approaching a finality," he says: "The recent legislation of Congress respecting domestic slavery, derived as it has been from the original and pure fountain of legitimate political power, the will of the majority, promises ere long to allay the dangerous excitement. The legislation is founded upon principles as ancient as free government itself, and in accordance with them has simply declared THAT THE PEOPLE OF A TERRITORY LIKE THOSE OF A STATE, SHALL DECIDE FOR THEMSELVES WHETHER SLAVERY SHALL OR SHALL NOT EXIST WITHIN THEIR LIMITS." Is it within human power, even plausibly, to pervert these words from their clear and obvious meaning? Slavery agitation was, says the President, "directed chiefly to the Territories." It

was there a cause of continual quarrel. In the States, as far as regarded the States themselves, the question was at rest. They were almost universally considered as free to "decide for themselves," whether it should exist with them or not. To deny that power, or to control or regulate its exercise, it was conceded was impossible—State authority was in this connexion, absolute and exclusive. But the difficulty was as to the Territories. There the struggle was going on, and its agitation there, though in one sense local, was distracting and dividing "the people of this Union, and alienating their affections from each other." The recent legislation, (the Acts of 1854,) founded on the original and pure fountains of political justice, "the will of the majority," promises, (says the President,) ere long to allay the dangerous excitement. By that legislation, vindicated "by principles as ancient as free government itself," it was declared to be by the President, not only the doctrine of the country, but the law of the land, which all men were bound to obey, whether peasant or President, "that the people of a Territory, *like those of a State*, SHALL DECIDE FOR THEMSELVES WHETHER SLAVERY SHALL OR SHALL NOT EXIST WITHIN THEIR LIMITS." Mark the words and doubt, if you can, Mr. Buchanan's *then* meaning.

The people of a Territory have, on this disturbing question, LIKE POWER WITH THOSE OF A STATE. As the latter can decide it for themselves, untrammeled and unquestioned, so can the former. The principle on which the power rests with each is identical, and founded equally upon "the original and pure fountains of political power, THE WILL OF THE MAJORITY." The former, the people of a Territory, therefore, LIKE THOSE OF A STATE, are to decide for themselves, whether slavery shall or shall not exist within their limits. What limits? Territorial limits. During what period? Territorial existence. As a State, can decide it within State limits, and during State existence; so, *said the President*, if he designed to be sincere, (and who dare question this,) can the people of a Territory, within their limits, and during their existence.

In conclusion, then, the writer submits, that the doctrine of popular sovereignty, maintained from first to last by Judge Douglas, and now so assailed by the Attorney-General, has had the clearest and most explicit sanction of Congress, the Convention, and President Pierce, and, above all, of President Buchanan; and it is with equal conviction of its truth that he asserts, that without the

belief in the sincerity of such sanction, and especially the last, President Buchanan would now be enjoying the quiet and leisure of Wheatland, gratified only by remembering the services rendered his country, at home and abroad, in other public, but, perhaps, in his estimation, subordinate and less desirable stations than the one in which he now, as his friends assert, figures so conspicuously, and honorably, before the world, as well as the nation.

If the writer has been successful, he has made good these propositions :

I.—That Congress has no power to establish, or prohibit slavery in a Territory of the United States, before giving to it a Territorial government, or to protect it after that period.

II.—That the right of a citizen to emigrate into such Territory with slave property, is not by virtue of any express Constitutional provision, but because such Territory is the common property of all the States, and there is nothing in the Constitution denying the right.

III.—That the right only exists because slaves are property, and their owner entitled to the same privileges, guarantees and protection, that appertain to the owner of any other species of property.

IV.—That this being the reason and limit of the right, it is subject to all legitimate local power, to which other property is subject.

V.—That being property, and in this regard nothing else, it is within the local legislative power, wherever such power legitimately exists.

VI.—That a Territorial government, clothed with legislative authority, unrestrained except by the Constitution of the United States, can legislate respecting such property, in like manner, and to the same extent that it can legislate respecting any other property.

VII.—That Congress having no power itself, directly to establish, regulate or prohibit the introduction of such property, they cannot, in granting a Territorial government, and vesting it with legislative authority, direct that authority to do either as that would be—to do themselves INDIRECTLY what they are prohibited from doing AT ALL.

VIII.—That slaves being in this view but property, they are the fit subjects of legislative power wherever that is constitutionally lodged, and therefore the proper subjects of Territorial legislative power.

IX.—That the very policy and principle of giving such

power to a Territorial government in regard to slavery, as a domestic institution of their own, to be admitted, regulated or prohibited as they might deem advisable, and thereby to remove it permanently from Congressional interference and controversy, and consequent general agitation, was the sole purpose of the section of the act of 1854, which amongst other things, repeals the Missouri restriction, and which on account of that purpose exclusively, it is believed, received the almost unanimous vote of the Senators and Representatives of the Southern States, and the votes of the democratic Senators and Representatives of the free States, who gave it their support.

X.—That this principle was in words affirmed by the Cincinnati Convention not merely as one of expediency, but of constitutional obligation.

XI.—That besides receiving, when the Act was passed, and afterwards the sanction of President Pierce, it was, in the strongest terms which our language supplies, endorsed by President Buchanan, in his letter of acceptance of his nomination, of the 16th of June, 1856; and, FINALLY, that, upon this principle, in regard, especially, to slavery in the Territories DURING THE TERRITORIAL STATE, the presidential canvass was conducted in every State of the Union, and resulted in the election of Mr. Buchanan, at least as far as his votes in the free States were concerned, because, and only because, of the conviction of the voters in those States that Congress, the Cincinnati Convention, and himself, were sincere in its adoption, and that the same would be carried out in perfect good faith, and forever terminate, as they all alike proclaimed to the people would be its result, the almost fatal convulsion in which it had already involved the country. If these several conclusions have been maintained, as the writer conscientiously believes, he submits, that it is not only now too late to deny the doctrine they support, or to avoid it, with any hope of deluding an intelligent people; but that such an effort is, and will be considered equally repugnant to the clearest obligations of private and public morality. And, with such a stain upon its good name, and upon the frankness and honor of its leading statesmen, neither the party nor they will deserve to be hereafter confided in; and the good sense and virtue of the people will, on the very first occasion, proclaim their sentence of condemnation upon both. But the writer does not share in the apprehensions of those who anticipate such folly, as well as abandonment of duty. He does not believe that a great

party, claiming for itself, and, in regard to this question, justly claiming, the virtue of nationality, will be so regardless of its recent policy and pledged faith as now to violate both. A few, from mental weakness, or ultra opinions, or personal hostility, or private rivalry, may advise such a course, but it is confidently believed that it will, and by a judgment approximating unanimity, be instantly and absolutely disapproved and rejected. But, should it be otherwise, and such counsels prevail, the party will be certain to emerge from the contest, and deserve the fate, "lean, rent and beggard," and, what will be infinitely a more dire result, our government will also be rent from apex to corner stone.

With a few reflections suggested by the subject and the present condition of the country, and these remarks, already extended beyond the writer's original design, will be brought to a conclusion.

The democratic success in 1856 was owing more than to any other cause, to the manner in which the slavery question was disposed of by Congress, and the party, by establishing the now censured doctrine of popular sovereignty. Then it was approved by Congress, by the convention, and its nominee. It was esteemed by President Buchanan as a constitutional principle as ancient as free government itself, and as certain to remove the cause of the fearful disquiet, through which the country had passed or was passing. Not a word of doubt as to its soundness in principle or as to its national policy, was heard from the party, south or north. It was proclaimed too under circumstances particularly gratifying to the south. It was accompanied by an act, erasing from the statute book what she denounced as a dishonorable stigma, by assailing a valued and favored southern institution. She had long acquiesced in it for the sake of peace and of the Union, and from the same motive had in vain urged its application to all the territory that we then had or might thereafter acquire. In this she had the active support of her best and ablest friend, and one of the ablest statesmen of the Union, Mr. Calhoun. Much as he and the south had become dissatisfied with the compromise line—highly injurious and insulting as they believed it to have been to the south, and great therefore as they considered the error of its original adoption—they nevertheless were, for the sake of peace, willing even at the sacrifice of constitutional opinion and of feeling, to have had it extended throughout all our territory. But

the proposition was rejected by an irresistible majority of the House. On the 19th of February, 1847, Mr. Calhoun, in a speech opposing the compromise, said:—"One of the resolutions in the House, to that effect, (the continuance of the line,) was offered at my suggestion. I said to a friend, then, 'Let us not be disturbers of this Union; abhorrent to my feelings as is that compromise line, let it be adhered to in good faith, and if the other portions of the Union are willing to stand by it, let us not refuse to stand by it. It has kept peace for some time, and in the present circumstances perhaps, it would be better to continue it as it is.' But it was voted down by an overwhelming majority. It was renewed by a gentleman from a non-slaveholding State, and again voted down by an overwhelming majority." And this proposition was made too from the patriotic motives of its friends, when as was shown by an exhibit from the land office, produced by Mr. John M. Clayton, in support of his compromise plan of 1848, it would have appropriated exclusively to free labor ONE MILLION SIX HUNDRED THOUSAND SQUARE MILES, and left for slave and free labor *jointly*, BUT TWO HUNDRED AND SIXTY-TWO THOUSAND. The abolition spirit of the north, now so outraged, as it pretends, (with what sincerity let the facts tell,) at the repeal of the line, and at the judgment of the Supreme Court, denying the power to establish it, then in one solid phalanx, resisted its extension to the Pacific, although more than five times the extent of Territory would have been exclusively appropriated to their favored labor, and the remainder opened to that equally with the favored labor of the south. She had also in vain, and again with Mr. Calhoun's sanction, proposed to leave the constitutionality of the now repealed clause, (the Missouri restriction,) to the decision of the Judiciary. In both, her efforts were frustrated by northern votes; the representatives of that section, almost in mass, insisted not only on retaining the disparaging provision in its then limited operation, but upon applying it to every foot of subsequent territorial acquisition, and although the division offered by the south would have had as against her the unequal result above stated. The last, and it is believed, if adhered to in good faith, the effective remedy which the south also with almost one voice supported, and which with the aid of patriotic, national northern friends, they succeeded in establishing, was the principle of popular sovereignty as announced in the Nebraska and Kansas Act, afterwards

affirmed by the Cincinnati Convention, and in the strongest terms that our language furnishes, endorsed by Mr. Buchanan. This principle can, in no proper sense, be injurious to the south, or lead to consequences which might not have been or were not in fact anticipated. It was foretold that the Territory being thus alike opened to settlers north and south, that the greater population of the former, the greater facility of emigrating, and the greater need for emigration, caused by a denser and individually less thriving population, and generally a less fertile soil, would in all human probability, bring as settlers greater numbers from the north, and of course that every domestic institution, slavery above all others, would be settled by their voices; and yet, for peace, for the abandonment of the dishonoring badge of the compromise restriction, and above all, for the sake of the Union, the south not only assented to it, but joyfully, almost triumphantly proclaimed the doctrine as being fair in itself, divested of all degrading inferiority, calculated to heal the wounds inflicted by an unnatural fraternal strife, and to restore us to our ancient harmony and concord, and to secure us the high and lofty condition of one people, blessed by an inheritance of common freedom, won by the valor of a common ancestry, secured by one common government, enjoying a common present renown, and anticipating every thing of individual happiness and national power, that can belong to a free government, mighty, and justly honored in the estimation of the other governments of the world. Let neither the north nor the south point to the subsequent history of Kansas as a commentary on the doctrine. The blunders there committed can never be repeated. Their consequences were so near being fatal, that the example has furnished its permanent remedy. The technicality too on which it was ultimately placed, that the congressional and executive vision was by the contrivance resorted to, forced into a blindness which unfitted them to see an attempted gross fraud on the popular will, has been overruled by the great tribunal of the public, and will hereafter be considered as an exploded doctrine of political pleading. Nor is it conceivable that the south which ever feels dishonor as a wound, can be brought by noisy politicians to fail in good faith to her northern associates and friends, by violating in this instance her often pledged word. It has been truly said, that there are men "to whom a state of order is a sentence of obscurity," who are "nourished into a danger

ous magnitude by the heat of intestine disturbances," and who "by a sort of sinister piety, cherish in return the discords which are the parents of all their consequence." But these are not the men to create or guide public opinion. Let those, and they are to be found in every section of the land, be disregarded, and they will soon return to their native obscurity. It is but the agitation of the billows that brings them to the surface, where they float and offend. Let the waters be quieted and they sink, and the nuisance is removed. It is therefore in a spirit of constant and pure friendship for the south, in admiration of her citizens and her institutions, in a lively sensibility to her high reputation, in a conviction that such is her clear interest as well as duty, and in a never dying love of the Union, that the writer submits as, in his opinion, her obvious patriotic obligation, a frank, honest adherence to the principle of popular sovereignty as explained and attested by Congress, by the democratic party, and by President Buchanan.

Let the Charleston Convention, rejecting all such propositions as a congressional slave code, a repeal of the neutrality acts, and especially the legalizing of the foreign slave trade, a measure which would condemn us in the opinion of the savage as well as the civilized world, and offend against the long cherished sentiment of the great and good in every section of our country, adopt the Cincinnati platform, with substantially but one addition. The Kansas Act, beside its own peculiar principle of popular right, contained also that of the Clayton compromise. For this latter, when originally proposed, nearly the entire south, as well as most of the democrats from the north, voted. That plan was to submit to the Supreme Court all questions concerning slave property, that might arise. This is provided for, and with a facility for its execution, in the 9th section of the last act; and no better or more peaceful mode can be adopted. Let therefore the convention declare their approval of it, and announce the determination of the great party which they will represent, to acquiesce in the judgment of that high tribunal, whatever that shall be, and the intelligence and patriotism of the country cannot fail to rally to its support.

If a Territorial legislature pass laws, establishing, protecting or prohibiting slavery, those who shall believe either of such laws unconstitutional, can readily institute legal proceedings in their Territorial courts, to have the question decided, and when decided under the section

referred to, of the Kansas Act, (the 9th section,) a writ of error can be forthwith sued out to the Supreme Court of the United States, and there finally adjudicated. If that Court shall be of opinion, that slavery cannot be interferred with at all, by the Territorial legislature, nor by the people themselves, until meeting in convention to form a State Constitution, such laws, if prohibiting or abolishing slavery, will be adjudged unconstitutional and void. On the other hand, if the court shall be of opinion that they are within such legislative power, and that the power is constitutionally granted, then they will adjudge the same to be valid. Those who think that the question is involved in the Dred Scott decision, can have no objection to submit it to the same court and agreeing to be bound by the result; and now especially is every good citizen invoked to this clearly constitutional course, for the settlement of the question. The man who pretends to doubt the intelligence and integrity of the Supreme Court, is beyond argument. He is either fool or knave. A tribunal which has settled so many constitutional controversies affecting the rights of the States, as well as of individual citizens, and in the end with the universal approbation of the country, may well be entrusted with this. Whilst their talents, professional attainments and high individual integrity, place them as far beyond the chances of error as is vouchsafed to humanity; the ages of the members leaving them no possible motive to indulge a low ambition, but animating them with the lofty one only of discharging their high functions with perfect impartiality, render the existence of prejudice impossible. A stern sense of official duty would rebuke, if such feelings were possible—to such men, the first promptings of any selfish or sectional considerations, and cause them to bring to the meditation and decision of the question nothing but the calm, unimpassioned mind of the judge. And in the present state of the country, how commanding are the motives for democratic harmony. These were strong enough before, but how much stronger are they now, that we have been startled by the late Harper's Ferry treasonable outbreak, sympathised in, and aided, as it evidently was, by large numbers in the free States. Men of foresight have for years been predicting that such would sooner or later be the result of the teachings of some northern men. Amongst the most dangerous of these are what, at different periods of his late career, have fallen from *Gov. Seward*, the now favored candidate of the Republican

party. This gentleman is named from no hostility to him, personally, but because he is known to be a representative man, to be strong with his party because of his opinions on the question of slavery, and of his bitter unrelenting denunciation of the institution and its supporters. The zeal of thousands in his behalf is from a conviction which they think they have every reason to entertain, that his election would at an early day result in its extinction, not constitutionally, for that they know is impossible, but by force or fraud, unchecked by the influence and power of the general government. His private character, his talents and his social qualities, however excellent these may be, but serve in this particular to increase his power to delude and ruin, and to make him the more dangerous. His speech at Rochester was full of suggestions not only insulting to the south, but calculated to produce a servile insurrection. No such purpose, it is trusted, impelled him, but an unchastened ambition, greedy of success, has made him regardless of the means. He appeals therefore to the strongest if not the worst passions of our race. He encourages the prejudices of a philanthropic and religious fanaticism. He excites to violence a blind, unlicensed love of freedom, a freedom not under but above the law. He seeks to madden a dangerous unreflecting enthusiasm. He endeavors to stimulate the hopes of northern political aspirants; and with this view, and from supposing that in it lay his only chances of triumph, he denounces this domestic southern institution, with which the south has grown up, one closely connected with their habits and their interests, and upon whose maintenance, ever since this unfraternal war has been carried on, they believe their honor to be so intimately connected. He condemns it as at variance with the laws of nature and of God, and boldly asserts that its extinction is certain and near at hand, and invokes the early coming of the day. Extracts from his speech could be given which would fully sustain this statement. They are not given because it is hoped and believed that they would be too offensive to the patriotic sentiment of the country—that sentiment so feelingly encouraged in the parting advice of WASHINGTON. How vitally important is it then, that all practical, immaterial differences of opinion on this question of popular sovereignty, and on every other likely to weaken the democratic party, be at least set aside in the coming presidential contest. On these we can well agree to disagree. Whether a territorial people under a

territorial government can exercise the questioned power-over-slavery, before or only when in convention, to form a State constitution, can be of no real importance to north or south. But a few years, from the tendency of our people to emigrate to new territory, can intervene between the two periods. But the success of the Republicans will be a calamity, it is feared, beyond remedy, perpetual and fatal. How controlling then are the inducements to harmony with the democracy, and how important that its members in the free States, those who have ever resisted the crazed, ruinous free soil movement, and from a spirit of brotherly affection, the result of a pure patriotism, shall not be impeded by any dogmas as to sovereignty, in their nature easily misapprehended, calculated to diminish their power, and in all likelihood certain to give the vote of every one of the free States to the success of the Republican nominée, and who it is confidently said by his friends will be Governor Seward. This is the only question which stands in the way of his defeat; agreeing on that, and the triumph of the national candidate, and the preservation of our institutions, will be beyond all reasonable doubt.

Proscription for birth-place, except as it is meeting a certain and speedy death in one or two localities, is among the things that were. Citizenship, however acquired, whether by birth or choice, now gives equal rights, as the Constitution and laws intend and provide. Political religious proscription has also had its day—a tyranny so justly characterized as early as January, 1774, in a letter to a friend, by Mr. Madison, one of the purest and ablest statesman the world has ever known, as “that diabolical, hell-conceived principle of persecution.” It has died, unwept and unhonored, except by the fanatic, who would, if he dared, burn his fellow man at the stake, as the best means to convince him of the truths and mercies of Christianity, and of ensuring him the consolations of a Christian death, as well as of securing for himself, hereafter, the blessings of Heaven. Both of these are remembered by their former dupes with but surprise at their folly and injustice, and regret and shame at the troubles and outrages which they produced wherever they had sway. Almost all of the original questions which divided the two great parties of the country, both of which were equally patriotic, have been, in a great measure, settled. Such as are open can be farther discussed in a patriotic spirit, consistent with the general harmony which is so important to

our prosperity and good name. That, however, of slavery, comparatively of modern origin, remains, as before stated, to give us serious disquiet. Congress, the Cincinnati Convention, and President Buchanan, all united in the opinion that this could be adjusted with equal regard to the rights and feelings of all sections, by the doctrine of popular sovereignty contained in the legislation of 1854. In the language of the President, by virtue of that doctrine, it may soon be brought to a "finality." In this opinion the almost entire South, and the whole democratic North, concurred. That it is a sound opinion, no unprejudiced reasonable man can doubt. It will, too, forever put an end to the hopes of those who believe, or profess to believe, in an "irrepressible conflict" between the laboring systems of the country. No man, not even the demagogue, however unscrupulous, will then be absurd enough to express such an opinion, or to appeal, for its support, to popular prejudice. "As all nature's difference keeps all nature's peace," so, in this very difference, will be found the best elements of our prosperity and strength. The North will rejoice in the productions of the South, which can alone spring from one system of labor, and the South in those of the North, which can best perhaps arise from the other, whilst, in the view of the world, we shall present the glorious spectacle of an enlightened people, harmonious and powerful in our very contrasts, living under State governments adequate to all our local wants, and under a general government subjected to all the restraints which freedom requires, and clothed with all the powers necessary to our protection; a government, in the language of the greatest of our northern statesmen, (now, unfortunately, no more,) which will "become a vast and splendid monument, not of oppression and terror, but of WISDOM, and of PEACE, and of LIBERTY, upon which the world may gaze with admiration FOREVER."

A SOUTHERN CITIZEN.